



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/133,251	12/18/2013	David Skiba	4366CSM-223	3846

48500 7590 02/01/2018
SHERIDAN ROSS P.C.
1560 BROADWAY, SUITE 1200
DENVER, CO 80202

EXAMINER

CELANI, NICHOLAS P

ART UNIT	PAPER NUMBER
----------	--------------

2449

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

02/01/2018

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

cjacquet@sheridanross.com
pair_Avaya@firsttofile.com
edocket@sheridanross.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID SKIBA, GEORGE ERHART, and
LEE BECKER

Appeal 2017-001627
Application 14/133,251
Technology Center 2400

Before JOSEPH L. DIXON, JOHN P. PINKERTON, and
JAMES W. DEJMEK, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The claims are directed to an impact prediction of social media interaction. Claim 1, reproduced below, is representative of the claimed subject matter:

1. A method, comprising:

accessing a number of historical social media posts associated with a given domain;

selecting a historic viral event having a popularity greater than a previously selected deviation for events within the domain and comprising a first number of the historical social media posts;

identifying a historic viral signature indicating an attribute of the first number of the historical social media posts comprising the historic viral event;

monitoring a social media website for a number of current social media posts;

prior to the number of current social media posts becoming a current viral event, determining the degree of a first match between the number of current social media posts and the historic viral signature; and

upon determining the degree of the first match indicates a current viral event, performing a first response selected to perform a desired one of mitigation or promotion of the virality of the current viral event.

¹ Appellants indicate that Avaya Inc. is the real party in interest. App Br. 2.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Kim et al.	US 2009/0282100 A1	Nov. 12, 2009
Fleischman et al.	US 2012/0215903 A1	Aug. 23, 2012
Tuchman et al.	US 2013/0024322 A1	Jan. 24, 2013
Lawrence et al.	US 2013/0041860 A1	Feb. 14, 2013

Palash	WO 2010/127150 A2	Nov. 4, 2010
--------	-------------------	--------------

Sakaki ("Earthquake Shakes Twitter Users: Real-time Event Detection by Social Sensors," WWW 2010, Apr. 26–30, 2010).

REJECTIONS

The Examiner made the following rejections:

Claims 1–20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1–20 stand rejected under 35 U.S.C. § 112(a) or 35 U.S.C. § 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement.

Claims 1–11 and 13–20 stand rejected under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the Applicants regard as the invention.

Claims 1, 2, 6, 9–11, 13, 15, 19, and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Palash in view of Sakaki.

Claims 3 and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Palash in view of Sakaki and further in view of Lawrence.

Claims 4, 7, 8, 14, and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Palash in view of Sakaki and further in view of Tuchman.

Claims 5 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Palash in view of Sakaki and further in view of Fleischman.

Claim 12 stands rejected under 35 U.S.C. § 103 as being unpatentable over Palash in view of Sakaki.

Claims 1, 2, 6, 9–11, 13, 15, 19, and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Palash in view of Sakaki and further in view of Tuchman.

Claim 12 stands rejected under 35 U.S.C. § 103 as being unpatentable over Palash in view of Sakaki.

ANALYSIS

35 U.S.C. § 101

With respect to claims 1–20, Appellants argue the claims together. (App. Br. 6). We select independent claim 1 as the representative claim for the group and will address Appellants’ arguments thereto.

Appellants submit that the rejection is improper for failing to establish *a prima facie* case of non-patentable subject matter and maintains that the claims are properly directed towards patent-eligible subject matter under 35 U.S.C. § 101. (App Br. 9). Appellants further contend that the Examiner has not set forth with sufficient clarity and specificity sufficient information to establish the *prima facie* case. (App Br. 9). Appellants argue that “the claims are not directed to a law of nature, a natural phenomenon, or an

abstract idea and, therefore, Step 2A should be answered in the negative.”

(App Br. 10). Appellants further argue that

the claims are directed towards management of a contact center, the particular application is plainly evident. For example, the claims, among other things, utilize a processor to access historical viral events and identify a common attribute associated with a present event for the purpose of managing (promoting or mitigating) the event.

(App Br. 11). Appellants further contend that the claimed invention is not directed to one of the:

four categories (*The Update*, pp. 4-5):

A “Fundamental economic practices”

B. “Certain Methods of Organizing Human Activity”

C. “An Idea ‘Of Itself’”

D. “Mathematical relationships/formulas.”

(App Br. 11–13). Appellants further generally contend that

Appellant’s claims are directed to novel and unconventional steps that confine the claim to a particular useful application, determining and responding to a potential viral event. Well-understood? Routine? Conventional? No, quite to the contrary. The unconventional steps provided are novel, non-obvious, and applicable to a particular useful application

(App Br. 14). Appellants generally argue “Appellant’s claims are directed to novel and unconventional steps that confine the claim to a particular useful application, assignment of an agent to minimize an identified risk.” (App Br. 15). Appellants dispute the Examiner’s identifying that the claimed invention is an idea itself or involving mathematics (Ans. 8) and Appellants argue:

[t]he claims recite limitations that are beyond the ability of an unaided human. For example, a human (absent a computer, display, network, or other aids) cannot monitor a social media website (*see* claim 1) incorporate a claimed processor, database, or network connection (*see* claim 12) or cause a computer to perform an action, including monitoring a social media website (*see* claim 15). Accordingly, the claims fall outside the realm of “an idea ‘of itself.’”

(Reply Br. 10). Appellants rely upon the *Ultramercial* and *Enfish* cases (*see Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)) and generally contend the findings in *Ultramercial* were that the claims were patent ineligible and merely recited a general purposes computer. (Reply Br. 8–9). Further, Appellants pray for relief and a final determination that physical structures are not a requirement to patentable subject matter. (Reply Br. 9). Appellants additionally contend “[t]he claims are directed towards the particular application of determining future viral events based, *inter alia*, on signatures common with past viral events.” (Reply Br. 11).

For the reasons discussed *infra*, Appellants have not persuaded us of error.

The Supreme Court’s two-step framework guides our analysis. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). If a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture or composition of matter) then the first inquiry is whether the claim is directed to one of the judicially recognized exceptions (i.e., a law of nature, a natural phenomenon, or an abstract idea). *Alice*, 134 S. Ct. at 2355. If so, the second step is to determine whether any element, or combination of elements, amounts to significantly more than the judicial exception. *Alice*, 134 S. Ct. at 2355.

Although the independent claims each broadly fall within the statutory categories of patentability, the Examiner determines the claims are directed to a judicially recognized exception—i.e., an abstract idea. (Final Act. 3, 19).

Instead of using a definition of an abstract idea, “the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.” *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016)); accord United States Patent and Trademark Office, *July 2015 Update: Subject Matter Eligibility* 3 (July 30, 2015), <https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-update.pdf> (instructing Examiners that “a claimed concept is not identified as an abstract idea unless it is similar to at least one concept that the courts have identified as an abstract idea.”). As part of this inquiry, we must “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Tex., LLC v. DirecTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

In *Alice*, the Court concluded claims directed to the mere formation and manipulation of economic relations may involve an abstract idea. *Alice*, 134 S. Ct. at 2356–57. Additionally, our reviewing court has concluded that abstract ideas include the concepts of collecting data, recognizing certain data within the collected data set, and storing the data in memory. *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). In particular, in *Content Extraction*, the court noted “banks have, for some time, reviewed checks, recognized relevant data such

Appeal 2017-001627
Application 14/133,251

as the amount, account number, and identity of account holder.” *Content Extraction*, 776 F.3d at 1347. Additionally, the collection of information and analysis of information (e.g., recognizing certain data within the dataset) are also abstract ideas. *Elec. Power*, 830 F.3d at 1353. Similarly, “using categories to organize, store, and transmit information” is an abstract idea. *Cyberfone Sys., LLC v. CNN Interactive Group, Inc.*, 558 F. App’x 988, 992 (Fed. Cir. 2014) (unpublished). Also, “tracking financial transactions to determine whether they exceed a pre-set spending limit” is an abstract idea. *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367 (Fed. Cir. 2015).

Further, merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea . . . to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas).

We find Appellants’ arguments unsupported and conclusory. Moreover, we agree with the Examiner that the claims are directed to an abstract idea, as Appellants’ claims are directed to nothing more than applying the general inductive reasoning framework to the subject matter of “viral events,” and the Examiner finds Appellants, importantly, do not claim a particular algorithm and in fact do not even describe one in their Specification. (Ans. 3).

Specifically, the Examiner maintains the claim merely requires:
accessing a number of historical social media posts; selecting a historic viral event; identifying a historic viral signature;

monitoring a social media website; determining the degree of a first match between the number of current social media posts and the historic viral signature; and performing a first response.

(Ans. 5). We agree with the Examiner.

Because we determine the claims are directed to an abstract idea, we analyze the claims under step two of *Alice* to determine if there are additional limitations that individually, or as an ordered combination, ensure the claims amount to “significantly more” than the abstract idea. *Alice*, 134 S. Ct. at 2355 (citing *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294, 1297–98 (2012)). The implementation of the abstract idea involved must be “more than [the] performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction*, 776 F.3d at 1347–48 (quoting *Alice*, 134 S. Ct. at 2359) (alteration in original).

Here, we agree with the Examiner that the additional limitations, separately, or as an ordered combination, do not provide meaningful limitations (i.e., do not add significantly more) to transform the abstract idea into a patent eligible application. (Final Act. 3; Ans. 8). Moreover, we agree with the Examiner that Appellants set forth “a naked assertion that he meets the standard, without evidence or even argument as to why he does.” (Ans. 8). It is well-settled that mere attorney arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997).

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner’s rejection of independent claim 1 and its dependent claims. For similar reasons, we also sustain the Examiner’s rejection of independent claims 12 and 17 and their respective

dependent claims, which recite similar limitations and were not argued separately. (*See* App. Br. 6–15). Further, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of claims 2–11, 13–16, and 18–20, which depend therefrom and were not argued separately. (*See* App. Br. 6–15).

35 U.S.C. § 112(a)

Claim 1

With respect to claims 1–20, Appellants present arguments to the claims together. We select independent claim 1 as the representative claim and address Appellants’ arguments thereto.

The Examiner sets forth a rejection that Appellants’ claims fail to comply with the written description requirement. (Final Act. 4–5).

Appellants identify specific corresponding portions of the Specification for each of the identified claim limitations. (App. Br. 16–17).

The Examiner maintains that all of the claims contain the limitations:

“selecting a historic viral event having popularity greater than a previously selected deviation for events within the domain”,
“identifying a historic viral signature indicating an attribute”,
“determining a degree of first match [between a post and the signature]” and “determining that the degree indicates a viral event,”

which are overbroad and undescribed because Appellants fail to prove possession of the full range of the scope claimed. (Final Act. 4). The Examiner explains at length the application of overbreadth which is addressed by enablement and may also be addressed by written description. (Ans. 11–21).

Appellants identify specific corresponding portions of the Specification for each of the identified claim limitations. (App. Br. 16–17).

We agree with Appellants that the originally filed Specification contains written description support for the invention as broadly disclosed and claimed. Although we agree with the Examiner on the statement of the law, we find the instant factual situation to be different than those discussed in the MPEP. Here, we find the scope of disclosure in the originally filed application to correspond with the broad claim language so as to evidence possession of the broad scope of claimed invention. Additionally, we note that the originally filed claims similarly track the broad originally filed disclosure. Consequently, we find the Examiner's discussion of the disclosure of a narrow species and claims directed to a broad a genus to be irrelevant to the instant filed disclosure, and we cannot sustain the Examiner's written description rejection.

35 U.S.C. § 112(b)

Claim 1

With respect to the Examiner's indefiniteness rejection of claims 1–11 and 13–20, Appellants argue the claims together as a group. We select independent claim 1 as the representative claim.

With respect to independent claim 1, the Examiner finds:

the notice function turns upon a definite and recognizable time that a person of ordinary skill in the art would say that the current media posts have turned into a viral event. Appellant not only refuses to define such a time, but expressly states that no definite time can be given. **Spec, para. 18:** “The term, ‘viral’ or ‘viral event’ as used herein refers to a number of social media posts containing a sentiment and/or endorsements of the posts that has become, or is predicted to become, atypically popular within a given domain, topic, and/or subject. An event is viral if the number posts and/or associated endorsements within a certain period of time are greater than the norm for like items within the

domain. The exact quantity and/or rate to declare an event viral is a matter of design choice.”

(Ans. 22).

Appellants argue that “The claims do not ask for a possible infringer or anyone else to know when current posts become viral.” (Reply Br. 17).

Furthermore, Appellants argue

the determining is not concerned with whether the post is viral or not. What is at issue is “*determining the degree of a first match between the number of current social media posts and the historic viral signature.*” A person performing non-infringing acts could never be brought into the realm of infringement solely by a current event being, or not being, “viral.”

(Reply Br. 17). We agree with Appellants that the timing of the determining step is not indefinite based upon the context of the disclosure and the claim language, but is merely broad claim language. Consequently, we do not sustain the Examiner’s indefiniteness rejection of independent claims 1 and 15, which contain similar limitations and dependent claim 13, which adds the limitations to independent claim 12 (which is not rejected).

With respect to dependent claim 2, the Examiner also makes an additional § 112(b) rejection over the claim terminology “substantially absent” without further detailing the reasoning therefore. (Final Act. 26). We note that the language is original claim language from originally filed dependent claim 2, but not specifically defined in the Specification. Appellants argue “[i]n the realm of eliminating attributes that do not lead to posts becoming viral, one may wish [sic, wish] to find a second attribute present in a non-viral event and absent, or substantially so, from a viral event.” (Reply Br. 18).

We agree with Appellants that the claims are sufficiently definite and are broad rather than indefinite. Consequently, we do not sustain the Examiner's indefiniteness rejection of dependent claim 2.

35 U.S.C. § 103

Claims 1, 12, and 15

With respect to independent claims 1, 12, and 15, Appellants argue the claims together. (App. Br. 21). We select independent claim 1 as the representative claim for the group and address Appellants' arguments thereto.

With respect to representative independent claim 1, Appellants disagree with the Examiner's findings that the Palash reference discloses a "domain." (App. Br. 21). Appellants contend "English words are full of homonyms. While 'domain' may refer to top-level Internet address, such as 'youtube.com,' it is plainly evident from Appellant's specification, in its entirety, that 'domain,' as used in the instant application, refers to a sphere of knowledge, influence, or activity." (App. Br. 21).

Appellants further contend "the art of record fails to *identify the claimed historic viral signature indicating an attribute*" and fails to teach every claimed limitation. (App. Br. 22).

We disagree. Rather, we agree with the Examiner that "[a] viral event can be a video." (Final Act. 26). Thus, the Examiner finds Palash describes a popularity engine for analyzing videos and determining their current popularity. (Final Act. 26) (citing Palash ¶ 25). The Examiner further finds Palash teaches of the determined current popularity of a video is greater than a predetermined deviation, this is an indication of a viral event. (Final Act. 26).

We find Appellants have not identified any express definition or identified a specific portion of the Specification which provides limiting context for the claim term “domain.” Consequently, we find Appellants’ argument to be unpersuasive of error in the Examiner’s factual findings or conclusion of obviousness of representative independent claim 1.

The Examiner

point[s] out how broad Applicant’s claim is. Palash considers many attributes in determining virality. **Para. 27** considers both the raw number of favorites and the curve for which they are applied. The raw number of favorites is an attribute of the post. The slope of the line of their adding (i.e. exponential growth) is an attribute. **Para. 30** considers other factors such as view counts, ratings, age of the video (an intrinsic attribute, which might be what applicant is complaining of), number of favorites, comments, search queries, identity of the content provider, shares. **Paras. 31-32;** geographic regions, controversial or racy content are also considered (again, all three are intrinsic attributes of the post).

(Final Act. 27–28).

We agree with the Examiner that the language of independent claim is broad, and Appellants have not identified any specific definitions or limiting context from the Specification to differentiate from the combination of the Palash and Sakaki references. As a result, Appellants’ arguments do not show error in the Examiner’s conclusion of obviousness representative independent claim 1.

Arguments in the Reply Brief

Appellants contend the fact remains that the art of record fails to “*identifying a historic viral signature indicating an attribute of the first*

number of the historical social media posts comprising the historic viral event.” (Reply Br. 19). Appellants further contend:

Palash does not “*identify[] a historic viral signature indicating an attribute of the first number of the historical social media posts comprising the historic viral event.*” Palash does not connect the attributes to popularity and Palash does not identify a signature of the attribute.”

(Reply Br. 19). Appellants further contend that “Sakaki, in §[§] 4.1 and 4.2 and elsewhere, is unconcerned with predicting virality.” (Reply Br. 20). We note Appellants’ argument is not commensurate in scope with the breadth of the language of independent claim 1 which does not expressly recite “predicting virality.” Thus, Appellants’ argument fails because it is not commensurate with the scope of the claim. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (“[A]ppellant’s arguments fail from the outset because . . . they are not based on limitations appearing in the claims.”). *See In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998) (“[The] proffered facts . . . are not commensurate with the claim scope and are therefore unpersuasive.”).

Appellants further contend “no determination of a degree of match indicates a viral event is taught. Sakaki does disclose the sending of emails based on sufficient authentic tweets regarding an earthquake, but such a teaching is different from what is claimed.” (Reply Br. 20). Appellants identify no specific difference rather than merely repeating the language of the claim.

We disagree with Appellants and find that because of the breadth of independent claim 1, the combination of the Palash and Sakaki references teaches and fairly suggests the disputed claim limitations. As discussed

above with the written description and indefiniteness rejections, Appellants have proffered that the claims are broad. Consequently, the prior art teaches the broadly claimed invention and, further, because the Specification is drafted in the same broad manner, we find Appellants have identified no limiting context beyond general attorney argument.

Palash, Sakaki, and Tuchman

With respect to the alternative rejection including the Tuchman reference, Appellants contend that the Tuchman reference teaches “the promotion or mitigation of sentiment. (Tuchman ¶ 81).”

(Reply Br. 21). Appellants further contend:

The Examiner relies on a statement in Appellant’s Specification that a post contains sentiment. Then a leap is made to conclude that promoting virality is equivalent to promoting sentiment, it plainly is not, nor is it what is claimed. Virality is predicted and, based on a match, a response is made to affect virality, not sentiment.

(Reply Br. 21). We disagree with Appellants and agree with the Examiner that the action of an individual working to mitigate sentiments would similarly directly affect the promotion or mitigation of virality.

Claims 2, 4, 6, 8, and 11

We find Appellants generally repeat the language of the claim and provide a general argument for patentability. (App. Br. 23–25; Reply Br. 21–23). Moreover, the general arguments do not address the prior art as applied by the Examiner. (*See* Ans. 36 discussing length/shortness of the message as an attribute present or absent for claim to; *see* Final Act. 13 discussing the Tuchman reference which Appellants do not address for claim

Appeal 2017-001627
Application 14/133,251

for; *see* Final Act. 8 the discussing Sakaki having a subject and keyword of the root post as shown in section 4 and table 1 for claim 6, etc.)

Merely reciting the language of the claim is insufficient. *See* 37 C.F.R. § 41.37(c)(1)(iv))(2015) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”). Merely alleging that the references fail to support an obviousness rejection is insufficient to persuade us of Examiner error. Attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *See Geisler*, 116 F.3d at 1470; *see also In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); and *Ex parte Belinne*, No. 2009-004693, 2009 WL 2477843, slip op. at 7–8 (BPAI Aug. 10, 2009) (informative), *available at* <http://www.uspto.gov/web/offices/dcom/bpai/its/fd09004693.pdf>.

Here, we find Appellants’ arguments are conclusory in nature and fail to address the thrust of the Examiner’s obviousness rejections.

“Argument in the brief does not take the place of evidence in the record.” *In re Schulze*, 346 F.2d 600, 602 (CCPA 1965) (citing *In re Cole*, 326 F.2d 769, 773 (CCPA 1964)). This reasoning is applicable here.

On this record, we find Appellants have failed to present *substantive* arguments and supporting *evidence* persuasive of Examiner error. *Cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for [patentable] distinctions over the prior art.”).

CONCLUSIONS

The Examiner did not err in rejecting claims 1–20 based upon a lack of patent eligible subject matter under 35 U.S.C. § 101 and the Examiner did not err in rejecting claims 1–20 based upon obviousness under 35 U.S.C.

Appeal 2017-001627
Application 14/133,251

§ 103, but the Examiner erred in rejecting claims 1–20 based upon a lack of written description under 35 U.S.C. § 112(a) and the Examiner erred in rejecting claims 1–11 and 13–20 based upon indefiniteness under 35 U.S.C. § 112(b).

DECISION

For the above reasons, we sustain the Examiner’s rejections of claims 1–20 based upon a lack of patent eligible subject matter under 35 U.S.C. § 101 and for obviousness under 35 U.S.C. § 103, but we reverse the Examiner’s rejection of claims 1–20 based upon a lack of written description support under 35 U.S.C. § 112(a) and of claims 1–11 and 13–20 based upon indefiniteness under 35 U.S.C. § 112(b).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED